

ESTTA Tracking number: **ESTTA770448**

Filing date: **09/14/2016**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

| | |
|---------------------------------------|---|
| Name | Exxon Mobil Corporation |
| Granted to Date of previous extension | 09/14/2016 |
| Address | 5959 Las Colinas Blvd. Irving, TX 75039 UNITED STATES |
| Attorney information | Tyson D. Smith Pirkey Barber PLLC 600 Congress Ave., Suite 2120 Austin, TX 78701 UNITED STATES tsmith@pirkeybarber.com, smeleen@pirkeybarber.com, eolson@pirkeybarber.com, tmcentral@pirkeybarber.com |

Applicant Information

| | | | |
|------------------------|---|------------------------|------------|
| Application No | 86861515 | Publication date | 05/17/2016 |
| Opposition Filing Date | 09/14/2016 | Opposition Period Ends | 09/14/2016 |
| Applicant | J.G.B. Enterprises, Inc. 115 Metropolitan Park Drive Liverpool, NY 13088 UNITED STATES | | |

Goods/Services Affected by Opposition

Class 017. First Use: 2007/03/00 First Use In Commerce: 2007/03/00
All goods and services in the class are opposed, namely: hydraulic hose formed of reinforced SBR-rubber for use in industrial hydraulic systems and heavy equipment

Grounds for Opposition

| | |
|--------------------------------------|----------------------------|
| Priority and likelihood of confusion | Trademark Act Section 2(d) |
|--------------------------------------|----------------------------|

Mark Cited by Opposer as Basis for Opposition

| | | | |
|-----------------------|------------|-----------------------|------------|
| U.S. Registration No. | 904548 | Application Date | 07/07/1970 |
| Registration Date | 12/22/1970 | Foreign Priority Date | NONE |
| Word Mark | JAYFLEX | | |
| Design Mark | | | |

| | |
|---------------------|--|
| Description of Mark | NONE |
| Goods/Services | Class 001. First use: First Use: 1964/03/25 First Use In Commerce: 1964/03/25 PLASTICIZERS |

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|-------------|--|
| Attachments | Notice of Opposition - EXCO316.pdf(20052 bytes) |
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

| | |
|-----------|----------------|
| Signature | /TDS/ |
| Name | Tyson D. Smith |
| Date | 09/14/2016 |

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

| | | |
|-----------------------------|---|----------------------|
| In Re Serial No. 86/861,515 | § | |
| Filed: December 30, 2015 | § | |
| Mark: J-FLEX | § | |
| Published: May 17, 2016 | § | |
| | § | |
| EXXON MOBIL CORPORATION, | § | |
| | § | Opposition No. _____ |
| Opposer, | § | |
| | § | |
| v. | § | |
| | § | |
| J.G.B. Enterprises, Inc., | § | |
| | § | |
| Applicant. | § | |

NOTICE OF OPPOSITION

Exxon Mobil Corporation (“Opposer”), a New Jersey corporation having a principal place of business at 5959 Las Colinas Boulevard, Irving, Texas, 75039-2298, believes that it will be damaged by registration of the mark identified above, and hereby opposes same under the provisions of 15 U.S.C. § 1063. As grounds for opposition, Opposer asserts that:

1. Since at least as early as 1964, Opposer has continuously and extensively used the mark JAYFLEX in connection with the sale and promotion of plasticizer products.
2. Opposer’s mark JAYFLEX is inherently distinctive, serving to identify and indicate the source of Opposer’s goods to the consuming public, and to distinguish Opposer’s goods from those of others.
3. Additionally, as a result of Opposer’s extensive use and promotion of its mark JAYFLEX, the mark has become distinctive and is widely recognized by consumers. Opposer has

invested significant effort and resources in advertising and promoting its mark JAYFLEX and the goods sold under that mark, with the result that the purchasing public has come to know, rely on, and recognize Opposer's goods by that mark. Opposer has established significant goodwill in its mark JAYFLEX.

4. In addition to its extensive common law rights, Opposer owns an incontestable federal registration for JAYFLEX for plasticizers. *See* U.S. Reg. No. 904,548.

5. J.G.B. Enterprises, Inc. (the "Applicant") is a New York corporation with an address of 115 Metropolitan Park Drive, Liverpool, New York 13088.

6. Applicant filed U.S. Serial No. 86/861,515 (the "Application") pursuant to 15 U.S.C. § 1051(a) on December 30, 2015, for the mark J-FLEX ("Applicant's Mark"). The Application covers "hydraulic hose formed of reinforced SBR rubber for use in industrial hydraulic systems and heavy equipment," in Class 17.

7. The Application was published in the *Official Gazette* on May 17, 2016. Opposer has been granted an extension of time through September 14, 2016 to oppose the Application.

8. There is no issue as to Opposer's priority. Opposer's first use in commerce of its mark JAYFLEX precedes by decades the filing date and claimed first use of Applicant's Mark.

9. Applicant's goods are related to the goods for which Opposer has used and registered its mark JAYFLEX.

10. Applicant's Mark (J-FLEX) is confusingly similar to Opposer's mark JAYFLEX. Indeed, the marks are identical, except that Applicant's Mark merely substitutes the term "J-" for the phonetically identical term "JAY."

11. Applicant's Mark so resembles Opposer's mark JAYFLEX as to be likely, when used in connection with the goods claimed in the Application, to cause confusion, or to cause mistake, or to deceive. Purchasers and prospective purchasers are likely to mistakenly believe that the goods Applicant offers under Applicant's Mark are sponsored, endorsed, or approved by Opposer, or are in some way affiliated, connected, or associated with Opposer. Opposer would thus be damaged by registration of Applicant's Mark, and the Application should be refused under 15 U.S.C. §§ 1052(d) and 1063.

12. Opposer has not given Applicant permission or approval to use or register Applicant's Mark.

13. Registration by Applicant of Applicant's Mark on the Principal Register is inconsistent with Opposer's rights under the aforementioned registration and its common law rights, and would be damaging to Opposer.

14. In addition, registration of Applicant's Mark would damage Opposer because it would confer upon Applicant statutory presumptions to which it is not entitled in view of Opposer's prior use and registration of its mark JAYFLEX.

WHEREFORE, Opposer prays that Application Serial No. 86/861,515 be rejected, and that registration of the mark therein be refused.

This Notice of Opposition is being filed electronically, along with the filing fee required by 37 C.F.R. § 2.6(a)(17). The Commissioner is authorized to draw on the Deposit Account of Pirkey Barber PLLC, Account No. 50-3924/EXCO316/SPM, if there is any problem with the processing of the electronically submitted fee.

Respectfully submitted,

Date: September 14, 2016

/Tyson D. Smith/
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512.322.5200

ATTORNEYS FOR OPPOSER

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing NOTICE OF OPPOSITION was served on Applicant's counsel on September 14, 2016 via First Class Mail, postage prepaid at the following address:

Bernhard P. Molldrem, Jr.
Law Office of Bernhard Molldrem
224 Harrison Street, Suite 200
Syracuse, New York 13202

/Tyson D. Smith/